

or as a co-fiduciary, who are holding personal property for the use or benefit of natural persons.

2. That such a showing by *amici curiae*, together with the showing made by all other classes represented by the petitioners and respondents herein, will enable this Honorable Court to utilize language in its decision which will be dispositive of all issues and thereby serve the public policy by avoiding unnecessary future litigation upon reversal or reversal and remand of the decision of the Supreme Court of the State of Illinois.

3. That the arguments and authorities sought to be submitted to this Honorable Court for its consideration in the determination of the definition of "individuals" as used in Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, in a brief by *amici curiae*, will not be predicated upon any evidentiary matters but rather will be predicated upon precedent, the explanation of the proposed amendment by the Illinois Legislature as required by statute (Appendix A, pages A1-A7); an opinion issued and promulgated by the Attorney General of the State of Illinois, in relation to said amendment to the Constitution (Appendix B, pages A8-A14); and an opinion issued and promulgated by the State's Attorney of Cook County, Illinois (Appendix C, A15-A16).

Respectfully submitted

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IN THE

Supreme Court of the United States

OCTOBER TERM A. D. 1971

No. 71-685

ROBERT J. LEHNHAUSEN,

Petitioner,

vs.

LAKE SHORE AUTO PARTS, et al.,

Respondents.

No. 71-691

EDWARD J. BARRETT,

County Clerk of Cook County, Illinois, et al.,

Petitioners,

vs.

CLEMENS K. SHAPIRO et al.,

Respondents.

On Writ Of Certiorari To The
Supreme Court Of Illinois

BRIEF OF AMICI CURIAE

Prefatory Statement

The American National Bank and Trust Company of Chicago; Chicago Title and Trust Company; Continental Illinois National Bank & Trust Company of Chicago; The First National Bank of Chicago; Harris Trust and Savings Bank; La Salle National Bank; The Northern Trust Company; Amalgamated Trust & Savings Bank; Beverly Bank; Chicago City Bank and Trust Company; Drovers National Bank; Exchange National Bank of Chicago; First Bank of Oak Park; First National Bank and Trust Company of Evanston; Mercantile National Bank of Chicago; National Boulevard Bank of Chicago; Northwest National Bank; Pioneer Trust & Savings Bank; Pullman Bank and Trust Company; Sears Bank and Trust Company; State National Bank; and Suburban Trust & Savings Bank, all being members of the Corporate Fiduciaries Association of Illinois, (hereinafter referred to as "Fiduciaries"), adopt the briefs and arguments of the Petitioners and Respondents advocating that Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, is a valid constitutional amendment and in full force and effect, and exempts "individuals" from taxation of personal property.

The Fiduciaries will limit this brief and argument solely to a showing that "individuals" as used in Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, includes fiduciaries, both corporate and individual, whether acting as a sole fiduciary or as a co-fiduciary who are holding personal property for the use or benefit of natural persons.

Opinion Below

The opinion and dissent thereto of the Supreme Court of the State of Illinois is reported in 49 Ill. 2d 137 and 237 N.E. 2d 592.

Jurisdiction

The jurisdiction of this Court is invoked to review a final judgment of the Supreme Court of Illinois pursuant to Title 28 U.S.C. § 1257 (3). The decision of the court below was rendered on July 9, 1971. A petition for rehearing was denied on August 24, 1971. The petitions for writ of *certiorari* were granted April 3, 1972.

Constitutional Provision

Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, provides:

"Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

Question Presented

The overriding issue presented in these cases is whether the exemption of "individuals" from personal property tax by Article IX-A of the Constitution of the State of Illinois of 1870, as amended and adopted, is violative of the Fourteenth Amendment to the Constitution of the United States.

Ancillary thereto the *amici curiae*, Fiduciaries, wish to make it eminently clear that the term "individuals" as utilized in Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, includes and encompasses all fiduciaries, both corporate

and individual, whether acting as a sole fiduciary or as a co-fiduciary, who are holding personal property for the use or benefit of natural persons.

Statement of the Case

The *amici curiae* fiduciaries adopt the statement of the case contained in the brief of the petitioner Robert J. Lehnhausen, filed by William J. Scott, Attorney General of the State of Illinois.

Summary of Argument

Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, exempts "individuals" from personal property tax. The term "individual" includes all fiduciaries, both corporate and individual, whether acting as a sole fiduciary or as a co-fiduciary, who are holding personal property for the use or benefit of natural persons, as evidenced by:

(a) explanation and arguments of the Legislature of the State of Illinois published and distributed in compliance with statute by the Secretary of State of the State of Illinois, to all of the electorate, prior to the submission of Article IX-A of the Constitution of the State of Illinois of 1870 to the electorate for their adoption or rejection;

(b) the opinion, issued and promulgated by the Attorney General of the State of Illinois, on January 22, 1971, relative to the validity and construction of Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved; and

(c) the opinion issued and promulgated by the State's Attorney of Cook County, Illinois, on December 28, 1970, relative to the question whether Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, applies to personal property held in a fiduciary capacity for the use and benefit of natural persons.

ARGUMENT

THE LEGISLATIVE HISTORY OF THE PASSAGE OF THE ILLINOIS SENATE JOINT RESOLUTION NO. 30 TO PROHIBIT THE TAXATION OF PERSONAL PROPERTY BY VALUATION AS TO "INDIVIDUALS" INDISPUTABLY DEMONSTRATES THAT BOTH THE LEGISLATURE AND ELECTORATE OF ILLINOIS UNDERSTOOD AND INTENDED THAT THE TERM "INDIVIDUALS" INCLUDES ALL FIDUCIARIES HOLDING PERSONAL PROPERTY FOR THE USE OR BENEFIT OF NATURAL PERSONS.

On May 15, 1969, the Senate of Illinois adopted Senate Joint Resolution No. 30, as amended, reading as follows:

"Senate Joint Resolution No. 30

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971."

(Journal of the Senate of the Seventy-sixth General Assembly of the State of Illinois of April 29, 1969, pgs. 1038-1039 and of May 15, 1969, pgs. 1407-1408).

Senate Joint Resolution No. 30 was thereafter adopted by the House of Representatives of the State of Illinois on June 30, 1969. (Journal of the House of Representatives of the Seventy-sixth General Assembly of the State of Illinois of June 30, 1969, pg. 5076).

Section 2 of Article XIV of the Illinois Constitution of 1870, dealing with amendments proposed to the Illinois Constitution *by the Illinois General Assembly*, requires that a proposed amendment "be submitted to the electors of this state for adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law. Each proposed amendment shall be published in full at least three months preceding the election, . . ." (Emphasis Added).

In accordance with the foregoing constitutional requirement that amendments to the Constitution of Illinois proposed by the General Assembly of Illinois be submitted to the electors for adoption or rejection "in such manner as may be prescribed by law," the General Assembly of Illinois enacted an Act entitled "An Act to provide the manner of proposing amendments to the Constitution, and submitting the same to the electors of the State", approved March 14, 1877, as amended (Ill. Rev. Stat. 1969, Ch. 7½, Secs. 1-8). Section 2 of said Act provides, in part, as follows:

"The General Assembly in submitting an amendment to the Constitution to the electors, shall prepare a brief explanation of such amendment, a brief argument in favor of the same, and the form in

which such amendment will appear on the separate ballot . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment. *** In addition to the notice hereby required to be published, the Secretary of State shall also cause the existing form of the constitutional provision proposed to be amended, the proposed amendment, the explanation of the same, the arguments for and against the same, and the form in which such amendment will appear on the separate ballot, to be published in pamphlet form in 8 point type or the equivalent thereto; and in cities, villages and incorporated towns having boards of election commissioners, the Secretary of State shall furnish such boards with a sufficient supply of such pamphlets to enable the boards to supply a copy thereof to every elector in their respective cities, villages and incorporated towns and such boards shall mail a copy of the pamphlet to every registered elector in their respective municipalities at least 40 days prior to the election, and shall also supply copies thereof to every elector applying to them. In all counties, the Secretary of State shall furnish a sufficient supply of such pamphlets to the several county clerks to enable the clerks to supply a copy thereof to every elector in their respective counties, outside of cities, villages or incorporated towns that have a board of election commissioners and the county clerks shall mail a copy thereof to every such registered elector in their respective counties not less than 40 days prior to the election and shall also supply copies thereof to every elector applying for them. ***"

For the purpose of complying with the provisions of the aforesaid statute, the Illinois Senate adopted Senate Joint Resolution No. 43 providing for the appointment of a special committee on constitutional amendments, consisting of members of the Illinois Senate and of mem-

bers of the Illinois House of Representatives, to prepare a brief argument in favor of and against such amendment, and to submit the Committee's report to the General Assembly of Illinois (Journal of the Senate of the Seventy-sixth General Assembly of the State of Illinois of June 30, 1969, pg. 3459).

In compliance with the Illinois Senate Joint Resolution No. 43, a special committee on constitutional amendments was appointed to prepare the explanation of, arguments in favor of and against, and the form of ballot on the proposed amendment to add Article IX-A to the Illinois Constitution of 1870 to prohibit the taxation of personal property by valuation as to individuals.

Such explanation, arguments and form of ballot were prepared by said Committee and approved and adopted by the Seventy-sixth General Assembly of the State of Illinois¹ and was published by the Secretary of State in pamphlet form² and mailed to every registered voter in the State of Illinois more than 40 days prior to the election of November 3, 1970, on which date the proposed amendment to add Article IX-A to the Illinois Constitution of 1870 so as to prohibit the taxation of personal property by valuation as to individuals was voted upon and adopted by the people of the State of Illinois.

1. Journal of the House of Representatives of the Seventy-sixth General Assembly of the State of Illinois of May 6, 1970 pgs. 30-33 and Journal of the Senate of the Seventy-sixth General Assembly of the State of Illinois of May 7, 1970, pgs. 8-11.

2. See Appendix A, pages A1-A7.

The argument prepared by the General Assembly against the proposed Amendment to add Article IX-A to the Illinois Constitution of 1870, which, as above noted, was approved and adopted by the Illinois General Assembly and mailed to every registered voter in the State of Illinois prior to the election at which the proposed Amendment was voted upon by the electorate, stated in part, as follows:

"It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is *owned by or held in a fiduciary capacity for the benefit of natural persons* is exempted from taxes; that which is owned by corporations, etc., is subject to taxes." (Emphasis Added) (App. A4-A5).

Likewise, opinions issued by the Attorney General of Illinois on January 22, 1971 and by the State's Attorney of Cook County, Illinois, on December 28, 1970, each held that personal property held in a fiduciary capacity for the benefit of natural persons were exempt from personal property taxes under the Amendment adding Article IX-A to the Illinois Constitution of 1870. (Appendices B, pages A8-A14, and C, pages A15-A16).

The burden or incidence of personal property taxation in Illinois in connection with personal property held in a fiduciary capacity is borne by the beneficiary of the fiduciary estate. Section 14 of the Illinois Principal and Income Act provides, in part, as follows:

"All ordinary expenses incurred in connection with the trust estate or with its administration and management including regularly recurring taxes assessed against any portion of the principal *** shall be paid out of income." (Ill. Rev. St. 1971, Ch. 30, Sec. 172 (1)).

In *Wise v. Commonwealth*, 95 S.E. 632, 122 Va. 693, (Supreme Court of Appeals of Virginia—1915), two trustees, who were non-resident of Virginia, argued that intangible personal property held in trust by them for the benefit of a Virginia resident was not subject to personal property taxes assessed in Virginia under a Virginia Act providing in part as follows: "If the property is held *** for the benefit of another, it shall be listed by and taxed to the trustee in the county of his residence ***."

In response to the argument advanced by the non-resident trustees the Supreme Court of Appeals of Virginia stated at page 633 of 95 S. E., as follows:

"Intangible personal property in the hands of a nonresident trustee, in the income from which a person over the age of 21 years residing in this state has a life estate, is, by virtue of the statute in such case made and provided (Acts 1897-98, p. 519, amending Code, § 492), taxable in this state in the county or corporation in which the beneficiary resides. *The tax, though assessed in the name of the trustee, is not against him but the beneficiary.* He is the mere conduit through the medium of which the tax upon the property of a citizen passes into the treasury."

* * *

"Though the tax is assessed in the name of the trustee, *the burden is, in reality, imposed upon the beneficial owner*, a resident of the commonwealth, who enjoys the protection of its laws along with other citizens, and ought, in fairness, to contribute her due proportion of revenue for the support of the government." ***

* * *

"The contention that the construction indicated would render the statute unconstitutional proceeds upon the hypothesis that the tax is against the non-resident trustee, whereas he is personally unaffected by the imposition, and is but the conduit through the medium of which the tax upon the property of a citizen passes into the state treasury. *Hunt v. Perry* (165 Mass. 287), 43 N. E. 103; *Lewis v. County of Chester*, 60 Pa. 325." (Emphasis Added).

(Certiorari was denied by the U. S. Supreme Court, 39 S. Ct. 287; 247 U.S. 582; 63 L. Ed. 432).

Fiduciaries, as *amici curiae*, submit that it was clearly not the intent of the General Assembly of Illinois nor of the electorate of the State of Illinois, who were notified and informed prior to voting upon the Amendment that personal property "owned by or held in a fiduciary capacity for the benefit of natural persons" was exempt from personal property taxation, to impose a personal property tax on a minor represented by his Guardian; on the incompetent represented by his Conservator; on the widow or children represented by a Trustee; on the heirs and individual legatees represented by the personal representative of a decedent's estate; or on any individual who is represented by another acting in a fiduciary capacity.

CONCLUSION

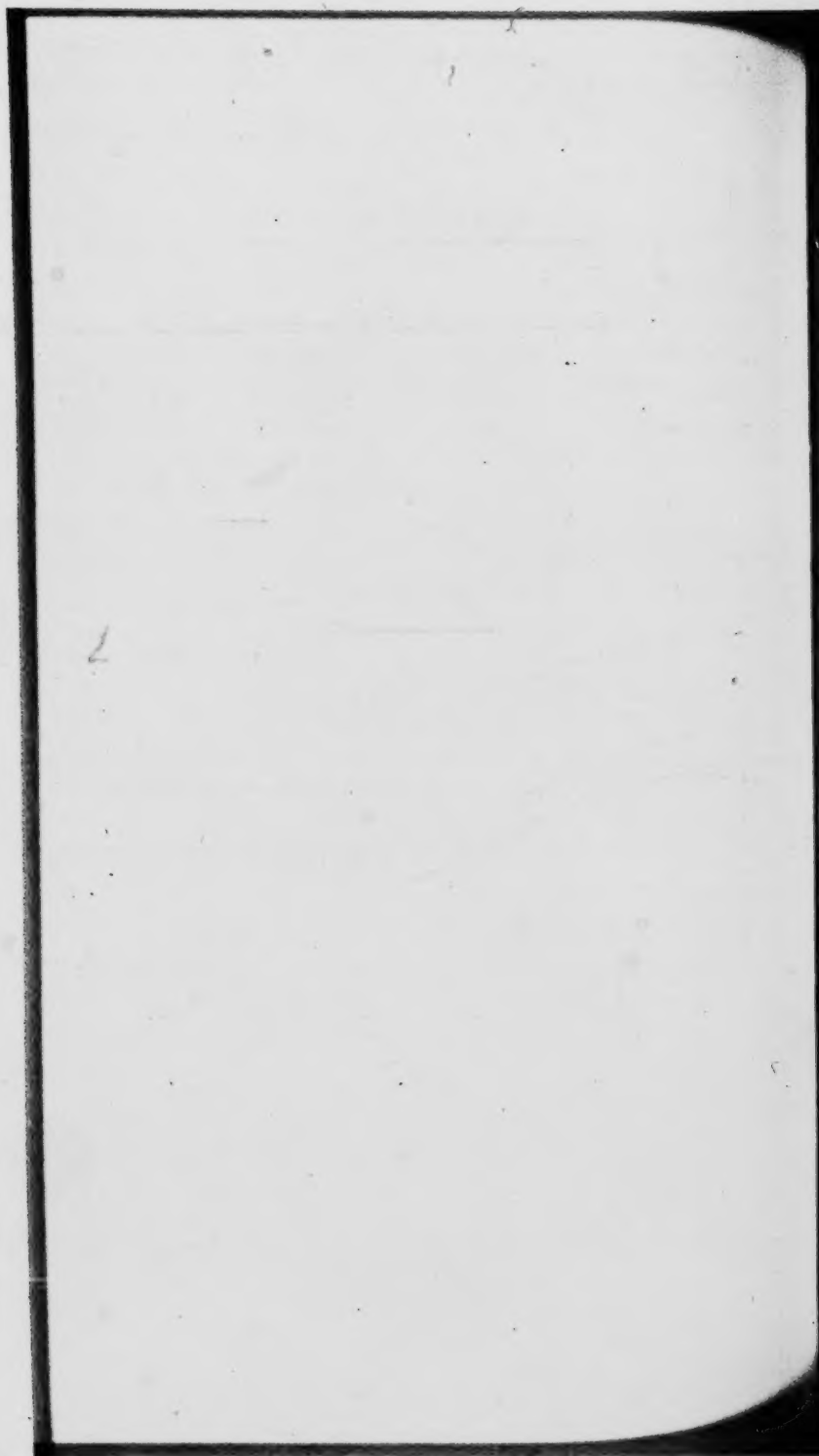
Should this Honorable Court reverse or reverse and remand the decision of the Supreme Court of the State of Illinois and hold that the Amendment adding Article IX-A to the Illinois Constitution of 1870 is constitutional, then these *amici curiae* respectfully urge that this Court utilize language in its opinion that the term "individuals" as used in the Amendment adding Article IX-A to the Illinois Constitution of 1870, includes all fiduciaries, both corporate and individual, whether acting as a sole fiduciary or as a co-fiduciary, who are holding personal property for the use or benefit of natural persons.

Respectfully submitted,

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A1

APPENDIX A
AMENDMENT

to the

CONSTITUTION OF ILLINOIS

THAT WILL BE SUBMITTED TO THE VOTERS
NOVEMBER 3, 1970

This folder includes

PROPOSED AMENDMENT TO CONSTITUTION
EXPLANATION OF PROPOSED AMENDMENT
ARGUMENTS IN FAVOR OF PROPOSED
AMENDMENT
ARGUMENTS AGAINST PROPOSED AMENDMENT
FORM OF BALLOT

Published in compliance with Statute

by

PAUL POWELL

Secretary of State

(Printed by Authority of the State of Illinois)

To the Electors of the State of Illinois:

At the general election to be held on the 3rd day of November, 1970 a blue ballot will be given to you and you will be called upon in your sovereign capacity as citizens to adopt or reject the following proposed amendment to the Constitution of Illinois.

PROPOSED AMENDMENT TO ADD ARTICLE IX-A

(Prohibition of taxation of personal
property by valuation as to individuals.)

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971.

EXPLANATION OF AMENDMENT (See Form of Ballot)

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

The purpose of the proposed addition of Article IX-A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:

—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals comprising about a third of the population of the State pay no personal property taxes whatever, while the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources, and, in rural areas, on their livestock, grain, farm implements, etc.

—The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

ARGUMENTS AGAINST THE PROPOSED AMENDMENT

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which

is owned by corporations, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user makes payments on it? Business interests generally will be at a disadvantage under this amendment.

—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out of State manufacturers.

—It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty — machinery, equipment, etc. — owned by a corporation.

—It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about \$140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

FORM OF BALLOT
PROPOSED AMENDMENT TO ADD ARTICLE IX-A
(Prohibition of taxation of personal
property by valuation as to individuals.)

EXPLANATION OF AMENDMENT

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870. Article IX-A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

Place an X in blank opposite "Yes" or "No" to indicate your choice.

- ☐ YES For the proposed amendment to add Article IX-A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
- ☐ NO

A7

CAPITOL BUILDING
SPRINGFIELD, ILLINOIS
OFFICE OF THE SECRETARY OF STATE

I, PAUL POWELL, Secretary of State of the State of Illinois, do hereby certify that the foregoing contains a true and correct copy of the proposed amendment, the explanation of the proposed amendment, the arguments in favor of the proposed amendment, the arguments against proposed amendment and the form in which said amendment will appear upon a separate blue ballot pursuant to Senate Joint Resolution No. 30 of the Seventy-sixth General Assembly, the original of which is on file in this office.

IN WITNESS WHEREOF, I here-
unto set my hand and affix the Great
Seal of the State of Illinois. Done at
my office in the Capitol Building in the
city of Springfield this 27th day of
February A.D. 1970, and of the Inde-
pendence of the United States the one
hundred and ninety-fourth.

PAUL POWELL,

Secretary of State.

(SEAL)

APPENDIX B

January 22, 1971

FILE NO. S-260

TAXATION:

Personal Property

Tax Exemption

—
Honorable Robert J. Lehnhausen
Director, Department of Local
Government Affairs
325 West Adams Street
Springfield, Illinois 62704

Dear Sir:

I have your recent letter wherein you state:

“The Department of Local Government Affairs is vested with certain statutory powers and duties relating to the assessment of property for property tax purposes, among which are the following:

“1. ‘Assist and advise the local governments of the State in matters pertaining to—the assessment and equalization of property—.’

“2. ‘Direct and supervise—the assessment for taxation of all real and personal property in this State—.’

“3. ‘Confer with, advise and assist local assessment officers relative to the assessment of property for taxation’. (Chapter 127, Paragraph 63b14.13 and Chapter 120, Paragraph 611, I.R.S.)

“Pursuant to such statutory provisions, inquiries have been made by local assessment officers concerning the effect of the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibiting, as to individuals, the taxation of personal property by valuation.

"We would appreciate receiving your opinion as to the following:

"1. Is an individual proprietor to be exempt from taxation on his business inventory and other personal property used in such business?

"2. Is the individual farmer exempt from taxation on farm equipment and personal property owned in his capacity as an individual farmer?

"3. Is the personal property of partnerships exempt, or will such personal property be taxable under the Revenue Act of 1939 because a partnership is considered to be an entity (even though composed of individuals) which requires treatment different from that accorded natural persons under the new Constitutional amendment?

"4. Is the personal property of a decedent's estate exempt from personal property tax if the heirs or legatees are individuals?

"5. Is the personal property of a decedent's estate exempt from personal property tax if the legatee is a corporation?

"6. Is the personal property held by an individual trustee exempt from taxation if the beneficiaries or beneficial owners are individuals? Is the answer different if the property is held by a corporate trustee?

"7. Is the personal property owned by tenants in common or joint tenants exempt from taxation?

"8. Is the personal property owned by a joint venture or other co-ownership exempt from taxation?

"Although the next assessment of personal property will be April 1, 1971, local assessing officials must soon begin to order the printing of forms for such assessment, and Supervisors of Assessment must be prepared to advise township assessors as required by Section 2 of the 'Revenue Act of 1939', (Chapter 120,

Paragraph 463, I.R.S.). We would, therefore, appreciate receiving your opinion at your earliest convenience."

As you have indicated in your letter, the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibits the taxation of personal property by valuation as to individuals. Your attention is called to Paragraph 499 of Chapter 120, 1969 Illinois Revised Statutes which states as follows:

"The property named in this section shall be assessed and taxed except so much thereof as may be, in this act, exempted:

"First: All real and personal property in this state.

"Second: All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property in transitu to or from this state, used, held, owned or controlled by persons residing in this state, and all intangible personal property of foreign corporations, except those excluded by section 18 of this Act, doing business in this state which is located in this state and used in their business transacted within the state, provided that the provisions of this section relating to the taxation of intangible personal property shall not apply to those foreign corporations which are required by law to pay a premium tax for the privilege of doing business in this State.

"Third: The shares of capital stock of banks and banking companies doing business in this state.

"Fourth: The capital stock of companies and associations incorporated under the laws of this state."

It can be observed from the language of the foregoing Paragraph 499 that the personal property tax is a tax

upon the personal property itself. Paragraph 534 of Chapter 120 does, of course, set forth certain rules pertaining to the listing of personal property but these do not change the nature of the personal property tax which is a tax upon the personal property.

It therefore becomes necessary for us to determine the effect of the constitutional amendment which prohibits the taxation of personal property by valuation as to individuals. It would be unreasonable to believe that the language of the constitutional amendment could expressly include each and every conceivable situation. Necessary implications and intendments from the language used in a statute may be resorted to in order to ascertain the legislative intent. See *U.S. v. Jones*, 204 Fed. 2d 745 (certiorari denied 346 U.S. 354). In that case the court said at page 754:

"Necessary implication refers to a logical necessity; it means that no other interpretation is permitted by the words of the Acts construed; and so has been defined as an implication which results from so strong a probability of intention than an intention contrary to that imputed cannot be supported. 42 C.J.S., page 405 and cases there cited. The term is used where the intention with regard to the subject matter may not be manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances and the general language. *Buxford v. Kuesby*, 35 Cal. App. 2d 643, 96 P. 2d 380; *Goldfein v. Continental Ins. Co.*, 125 Neb. 112, 249 N.W. 78; 42 C.J.S., page 406. Consequently that which is implied in a statute is as much a part of it as that which is expressed, for a statutory grant of a power carries with it, by implication, everything necessary to carry out the power and make it effectual and complete. * * *

Furthermore, at page 100 of Volume 34 of Illinois Law and Practice is found the following statement:

"In construing a statute to give effect to the legislative intent and purpose, the court should, if possible, give it a reasonable, sensible, practical, and common-sense construction even though such construction qualifies the universality of its language."

As indicated above, the personal property tax is a tax upon the personal property itself. The only logical conclusion then as to the meaning of the constitutional amendment (Article IX-A) is that if the effect of the tax would be directly upon an individual (as distinguished, for example, from a corporation) then such personal property tax is abolished.

Article IX-A of the Illinois Constitution of 1870 became effective January 1, 1971 and is as follows:

"Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

Provision for the adoption of Article IX-A was made by Senate Joint Resolution No. 30 of the 76th General Assembly which reads as follows:

"RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971."

Also pertinent is Senate Joint Resolution No. 67 which provides:

"RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that, in adopting Senate Joint Resolution No. 30, which submits to the electors of this State a constitutional amendment prohibiting the taxation of personal property by valuation as to individuals, it was the intention of this General Assembly to abolish the ad valorem taxation of personal property owned by a natural person or by two or more natural persons, and that, by the use of the phrase 'as to individuals,' this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common."

Turning now to the questions which you have asked I shall discuss them in order. Your first question asks whether an individual proprietor is exempt from taxation on his business inventory and other personal property used in such business. Since the effect of such a tax would be upon an individual, I am of the opinion that the individual proprietor would be exempt. Similarly, the individual farmer is exempt in your second question.

Thirdly, you have inquired as to whether personal property of a partnership is exempt. A partnership is an association of two or more persons to carry on a business

for profit. The effect of the taxation of partnership property would be directly upon the individual partners and consequently I am of the opinion that such property is also exempt.

In your fourth and fifth questions you inquired about the taxability of personal property in a decedent's estate. The effect of taxation of personal property in an estate would be directly upon the heirs or legatees. Consequently, if the heirs or legatees are individuals such personal property is exempt, but if the legatee is a corporation then such personal property would be subject to tax.

In your sixth question you inquired whether personal property held by an individual trustee is exempt from taxation if the beneficiaries or beneficial owners are individuals. Since the effect of the tax would be directly upon an individual beneficiary, such personal property would be exempt. The fact that the trustee is a corporation or an individual would make no difference.

Seventh, you inquired whether personal property owned by tenants in common or joint tenants as individuals is exempt. For the reasons stated above, such personal property would also be exempt. Personal property owned by individuals in a joint venture or other co-ownership would also be exempt since the effect of the tax would be upon individuals.

Very truly yours,

ATTORNEY GENERAL.

APPENDIX C

December 28, 1970

S. A. Legal Opinion No. 1340

President George W. Dunne
537 County Building
Chicago, Illinois 60602

Dear President Dunne:

A question has arisen as to whether the recently adopted amendment to the 1870 Constitution of the State of Illinois applies to personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships.

On November 3, 1970, the voters of Illinois approved the following amendment to the revenue article of the 1870 Constitution of the State of Illinois:

"ARTICLE IX-A

"Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*"

The schedule for implementation of this amendment provides:

"This amendment shall be effective January 1, 1971."

Resolution of the question depends upon the intention of the General Assembly as to the word "individual" when it submitted this proposed amendment to the electorate. Chapter 7 $\frac{1}{2}$, Paragraph 2 of the Illinois Revised Statutes of 1969 provides:

"The General Assembly in submitting an amendment to the Constitution to the electorate shall pre-

pare a brief explanation of such amendment, a brief argument in favor of the same. . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment."

Pursuant to this statutory direction, the Seventy-Sixth General Assembly prepared such arguments. In the arguments in favor of the proposed amendment, there is no indication that the proposed amendment would not apply to personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships.

However, the arguments against the proposed amendments (which were corrected, with specific reference to this matter) contain the following language:

"That [personal property] which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes."

Thus, the clear import of this legislative explanation of the proposed amendment is that personal property held in a fiduciary capacity for the benefit of natural persons shall not be subject to the personal property tax.

Therefore, it is my opinion that the recently adopted constitutional amendment prohibits taxation by valuation of personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships. (The provision of the Constitution, approved December 15, 1970, which prohibits reinstatement of any abolished ad valorem personal property tax, has no effect upon this opinion.)

Very truly yours,

EDWARD V. HANRAHAN,
State's Attorney of Cook County.

cc: P. J. Cullerton,
Cook County Assessor

